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ABSTRACT

Schools have expressed a need to know the identity and/or circumstances of young offenders in order to address school safety and security issues, and to provide a collaborative and coordinated case management approach for the rehabilitation of the young person. A framework for the exchange of information between youth justice and school officials concerning students who have young offender status is presented here. A young offender is an individual charged with, or found guilty of, a criminal code or other federal statute offense that was committed when he or she was between the ages of 12-17. The protocols outlined here describe obligations and procedures for disclosure, security, and the storage and destruction of information concerning students who have young offender status. These guidelines facilitate the exchange of necessary information, such as reports required by a youth court, and provide the effective supervision and enforcement of youth court orders, as well as ensuring the safety of students, staff, or other persons. The protocols also can guide school boards in developing procedures in the best interests of students and staff. Finally, the protocols ensure that appropriate authorities in the education and justice systems are aware of their responsibilities as dictated by law. (AJM)

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YOUNG OFFENDER INFORMATION SHARING PROTOCOL

December 1996

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Parents	✓
Stakeholders	✓
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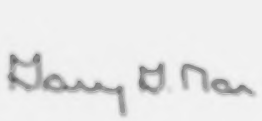
Message from the Ministers

The *Young Offender Information Sharing Protocol* provides a provincial framework for the exchange of information between youth justice and school officials concerning students who have young offender status.

On December 1, 1995, Bill C–37, amendments to the *Young Offenders Act*, came into effect. Some of the amendments contained in Bill C–37 respond to the needs of schools and school boards to know the identity and circumstances of young offenders in order to address school safety, security and rehabilitation issues. Specifically, Bill C–37 provides for information to be shared with school officials and other professionals involved in the supervision or care of a young person where the disclosure of information is necessary.

This protocol documents the obligations and procedures for the disclosure, security, storage and destruction of information. It has been jointly developed by the staff of our two departments in consultation with the Alberta School Boards Association, The Alberta Teachers' Association and the College of Alberta School Superintendents. We encourage you to use this protocol to develop procedures that will result in better ways to identify and respond to the needs of young offenders. We wish to thank all of those involved in its development.

Sincerely,



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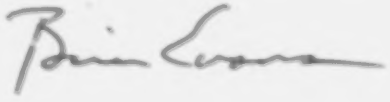

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ACKNOWLEDGMENT

We would like to thank the Canadian School Boards Association for permission to use portions of the organization's document, *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (January 1996). Special thanks also to the Alberta School Boards Association, The Alberta Teachers' Association and the College of Alberta School Superintendents for their comments and feedback in the production of this document.

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BACKGROUND

In recent years, school professionals and educational associations have presented briefs and lobbied the Government of Canada for amendments to the *Young Offenders Act*. A key concern has been the need for schools to know the identity and/or circumstances of young offenders in order to address school safety and security issues, and provide a collaborative and coordinated case management approach to the rehabilitation of the young person.

On December 1, 1995, Bill C–37, amendments to the *Young Offenders Act* came into effect. One amendment allows greater sharing of information on young offenders between professionals. Under the Act, a person with young offender status is an individual charged with, or found guilty of, a criminal code or other federal statute offence that was committed when he or she was between the ages of 12–17 years.

Some of the amendments contained in Bill C–37 respond to the needs of schools and school boards for disclosure and greater sharing of information about young offenders. For example, the Canadian School Boards Association has noted that, "Access to information on young offenders was identified as a key concern of school boards across the country since a common disposition condition for young offenders is mandatory school attendance."[1]

Bill C–37 (Section 38) provides for information to be shared between school officials and other professionals engaged in the supervision or care of a young person where the disclosure of information is necessary:

- to procure information for a report required by the Act;
- to comply with a court order concerning bail, probation or conditional supervision;
- to ensure conditions imposed on a temporary release; or
- to ensure the safety of staff, students or other persons.

[1] *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (p. 1), by the Canadian School Boards Association, 1996, Ottawa, ON.

Subsequent disclosure of information received for the above purposes is limited under the Act. A breach of the publication or records provisions of the *Young Offenders Act* is an offence.

The *Young Offenders Act* protects the privacy of young persons by placing strict limits on the publication of the identity of a young offender and the disclosure of records which serve to reveal a youth's young offender status. Publishing has been interpreted broadly by the courts to include "any act of communication from one to another." The idea here is to "provide a balance between the rights of the young person and the protection of the community."[2]

The *Young Offenders Act* allows a youth court judge to issue a court order authorizing the publication of the identity of a young offender who has committed, or is alleged to have committed, an indictable offence, when the judge is satisfied that the young person is dangerous to others and publication of the identity is necessary to assist in apprehending the young person.

One amendment contained in Bill C–37 further allows a youth court judge to issue a court order permitting disclosure of specific information to specific individuals if that judge is satisfied that the disclosure is necessary for the following reasons:

- the young person has been found guilty of an offence involving serious personal injury;
- the young person poses a risk of serious harm to persons; or
- the disclosure of the information is relevant to the avoidance of that risk.

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[2] *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (p. 1), by the Canadian School Boards Association, 1996, Ottawa, ON.

PURPOSES

This document provides a provincial framework for addressing some of the changes brought about by the amendments to the *Young Offenders Act*, especially as they relate to young offenders in the education system. The protocol and guidelines developed by Alberta Education and Alberta Justice are intended to:

- Describe obligations and procedures for disclosure, security, storage and destruction of information concerning students who have young offender status in the school system.

- Facilitate the exchange of information necessary:
  - to prepare a report required by a youth court;
  - to provide effective supervision and enforcement of youth court orders; and
  - to ensure the safety of students, staff or other persons.

- Guide school boards to develop their own procedures in the best interests of students and staff relative to the amended provisions of the Act in order "to ensure that the balance between the need to know and the rights of the young offender is maintained,"[3] and for handling the storage and destruction of information.

- Ensure appropriate authorities in the education and justice systems are aware of their relative responsibilities as outlined in the amendments to the Act.

[3] *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (p. 2), by the Canadian School Boards Association, 1996, Ottawa, ON.

GUIDING PRINCIPLES

- Crime prevention among youth is essential to the long-term protection of society. The ultimate goal is to act in the best interest of the young person; e.g., early identification, prevention and rehabilitation, while at the same time ensuring the safety of society.

- Protection of society, a primary objective of the criminal law applicable to youth, is best served by rehabilitation. Rehabilitation is best achieved by addressing the needs and circumstances of a young person that are relevant to the young person's behaviour.

- A coordinated and cooperative approach by professionals working with youth is critical in identifying and responding to the needs and circumstances of the young person at risk of committing a crime. This approach is ideal prior to involvement with the youth justice system.

GUIDELINES, OBLIGATIONS AND PROCEDURES

To effectively implement revisions to the Act, ongoing communication among all major partners involved is essential. At the provincial level, effective communication and exchange of information between the Departments of Education and Justice are important. At the local level, school boards and justice staff should have procedures in place to exchange necessary information with respect to young offenders. It is essential for all professionals who work with the young offender to clarify respective roles, to develop better ways to identify and respond to the needs of the young offender, and to examine partnership arrangements which will result in the building of trust.

The following are guidelines, obligations and procedures for information sharing between the education and justice systems.

1. *Provider and Receiver of Information*

Youth workers employed or contracted by Alberta Justice; e.g., probation officer, group home staff or any other person engaged in the provision of services to young persons, may provide oral or written information identifying a young person with young offender status to a designated school or to school board staff for the following reasons:

(a) Preparation of a Disposition Report

(i) Disclosure is necessary for the preparation of a report that is required under the *Young Offenders Act*. The information to be disclosed should include:

- name and age of the young person;
- nature of the report required by the youth court;
- timelines regarding when the information is required; and
- specific description of the type of information requested.

(ii) The most common report for which information will be exchanged is a Predisposition Report, described in Section 14 of the Act. This report usually contains the following information about the young person:

- age, character and behaviour;
- previous offences;
- family circumstances;
- school attendance and performance history;
- employment record; and
- substance abuse history.

(iii) Staff in schools and boards are expected to cooperate with youth workers by providing the relevant information needed in the preparation of predisposition and other reports. Information that could be provided by school staff to the youth worker may include:

- student attendance;
- student program of courses at school;
- student performance;
- the nature of any incidents giving rise to discipline and the type of discipline imposed; and

- the school period for which the information relates.

(b) Compliance with a Youth Court Order

Disclosure is necessary to ensure compliance by a young person with a youth court order. These orders typically contain conditions for a young person to attend school, obtain or continue employment, or participate in a program for employment or education/training.

The information to be provided to the designated school staff regarding disclosure to ensure compliance with a court order may include:

- the type of order with which the young person is expected to comply; e.g., bail, probation, conditional supervision, temporary release;
- the expected expiry date of the order;
- the offence to which the order has been made;
- the particular terms of the order which relate to school attendance or any other education matter; and
- indications of the need for special supervision or attention.

This information will greatly enhance the ability of schools to assist the young offender and provide effective programs as part of a collaborative team effort with youth workers.

(c) Safety of Staff, Students or Other Persons

Disclosure is necessary to ensure the safety of staff, students or other persons. The disclosure of information "would be appropriate where the young offender is convicted of a violent offense against the person or has known violent tendencies which may or may not have manifested themselves in a violent criminal offense."[4]

The information to be provided to designated school staff regarding disclosure to ensure the safety of staff, students or other persons may include:

- the type of disposition; e.g., open custody, probation, temporary release;
- the type of violent and/or other offences in relation to young offender status;

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[4] *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (p. 7), by the Canadian School Boards Association, 1996, Ottawa, ON.

- prior record of offences;
- indications of violent tendencies or patterns of behaviour;
- identifiable group of persons who could be at risk from the young offender;
- the expiry date of young offender status; and
- willingness of the young offender to avail himself or herself of services and facilities.

In a school context, a broader interpretation of the term "safety" as described in the Act would be appropriate. There are offences that threaten the safety of persons even though the offence is not directed specifically against a person. The following are examples of the types of offences which may assist youth workers in making decisions to disclose information, as well as to ensure that all offences which threaten the safety of students or other persons result in disclosure to designated school staff:

- arson;
- illegal possession of firearms, including offensive weapons;
- trafficking in illegal drugs;
- possession of explosives;
- illegal possession of explosives;
- criminal negligence;
- extortion; or
- procuring for purposes of prostitution.

In keeping with the intent of the *Young Offenders Act* to protect the identity of young offenders, information revealed by youth workers to designated school staff will be limited to information necessary for the purpose of ensuring the safety of students, staff or other persons as prescribed in the Act. However, difficulties may arise in circumstances where the youth worker discloses information that is deemed necessary but school staff perceive that more information or different information is necessary to ensure safety in school. In such circumstances, the youth worker should share information with designated school staff that is necessary to ensure the safety of staff and students. Examples of such information may include:

- the young offender's prior record of offences that might affect safety;
- recommendations for reducing the risk of violence and increasing the level of safety;
- patterns of behaviour which may signal the onset of activity which might affect safety; and
- any identifiable individual or group of persons who could be at risk from the young offender.

If uncertainty for disclosure persists, the youth worker should consult with the Executive Director, Young Offender Branch, Alberta Justice.

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2. *Preparation of a School Report*

Although not required under the *Young Offenders Act*, schools may from time to time provide information to youth workers in order to assist in the monitoring and rehabilitation of young offenders. This school report should be prepared by a designated school or board staff for youth court workers and may include the following:

- school attendance;
- record of achievement;
- results of school staff interviews with the young offender;
- indication of remorse toward victim(s);
- willingness to make amends; and
- willingness to undertake counselling.

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3. *Initial Disclosure and Custodian of Information*

The initial disclosure of information shall be made by the youth worker to a designate of the school board; e.g., superintendent. It is the responsibility of the board to designate an appropriate staff member at the school level; e.g., principal, who shall be the custodian of all young offender information provided by the youth worker. Boards must put procedures in place to ensure that no persons other than those designated or those with a "need to know" have access to the disclosed information. The procedures should include mechanisms to ensure that when a designated staff member who has custody of young offender information is transferred or leaves the school or district, an

appropriate staff member is designated as a replacement to ensure continuity and the safety of students, staff and other persons.

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4. *Subsequent Disclosure of Information*

Under Section 38 of the Act, the school or school board designate who initially receives the information provided by the youth worker, shall not disclose that information to any other person unless disclosure is necessary to prepare a court report, to ensure compliance with a youth court order, or to ensure the safety of staff, students and other persons.

The school or school board designate must exercise discretion regarding subsequent disclosure to any other person. Only school staff who "need to know" should be informed of a student's young offender status. "It is not appropriate to provide all staff with some form of a general bulletin in respect of a young offender where safety issues are a concern."[5] This respects "the need for balance between the right to know and the rights of the young offender to confidentiality."[6]

Where a student, a parent/guardian or a professional; e.g., social worker, requests information for the purposes of further counselling or coordinating services in the best interests of the young offender, the request should be referred to the youth worker.

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5. *Confidentiality of Information*

All information received by school or school board staff from a youth worker about a student with young offender status must be kept in confidence. There are legal and professional consequences; e.g., fine, imprisonment, for inappropriate disclosure of information. School boards must develop procedures to ensure that information received is kept confidential.

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[5] *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (p. 14), by the Canadian School Boards Association, 1996, Ottawa, ON.
[6] *ibid.*, p. 10.

6. *Storage of Information*

Section 38(1.15) of the Act provides that disclosed information about a young offender shall be kept separate from the student's school record and from any other record accessible to other staff. The information shall be available only to those persons described under Section 38(1.14) of the Act. It would be appropriate to append to the young offender's file, a list of the persons to whom the information is to be disclosed and only those whose names appear on the list should have access to the file. It would also be appropriate to keep the record of the young offender at the student's school with a further copy to be kept, for example, in the superintendent's office. Records should be kept in a locked cabinet and be under the control of designated staff; i.e., the principal in the case of records kept at the school, and the superintendent in the case of records stored elsewhere.

7. *Destruction of Information*

Section 38(1.15) of the Act also requires that disclosed information shall be destroyed when it is no longer required for the purpose for which it was disclosed. For example, where information was provided to ensure compliance with a probation order with a condition to attend school, the need for that information would cease with the expiry of the order. Similarly, in situations where information was provided to ensure safety, "the destruction of the information provided under that provision [Section 38(1.13)(b)] would occur when it could be demonstrated that there was no longer a concern in relation to safety of the staff, students or other persons, or when the young person is no longer a student of the jurisdiction."[7] Schools and school boards must develop and implement procedures in order to comply with these provisions of the Act.

[7] *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel* (p. 15), by the Canadian School Boards Association, 1996, Ottawa, ON. An example in this circumstance would be when a disclosure is made for the purpose of ensuring safety; e.g., pretrial order against a student charged with sexual assault. The record should be destroyed if the young person is found not guilty or the young person transfers to another school or jurisdiction.

8. *Release of Student Information*

The release of information in a student's school record must comply with provincial education legislation (Section 18 of the *School Act* and *Student Record Regulation*, AR 213/89), and board policy based on such legislation. This is important as there are no specific provisions in the *Young Offenders Act* which enable youth workers to obtain information from a student's record without the need for the school or school board to obtain the consent of the parent or student.

The *Student Record Regulation* (Section 3) requires consent of the parent, if the student is under 16 years of age, or of the student, if over 16 years of age, before information from a student's school record can be released. Information released from the student record must be for the preparation of a report for the court. The designated school staff should request consent to release information from the student's school record from the parent or the student for the purpose of preparing a report. If parental/student consent is not provided:

- school officials will need to work with the executive director, Young Offenders Branch, to determine alternate forms of obtaining the necessary information.
- school boards can apply to the Minister of Education for permission to release any student record information to justice workers in accordance with relevant sections of the *Student Record Regulation*, 3(2)(d).

9. *Student Transfer*

Schools and boards must inform youth workers whenever a young offender about whom they have received information transfers to another school. The school board designate at the school level is responsible for informing the youth worker about a transfer. The youth worker is responsible for advising the designate at the receiving school about the student's young offender status. This is necessary to prevent delaying the exchange of information between the school and jurisdictions. Once a transfer has taken place, the student's young offender information kept at the sending school must be destroyed.

10. Ongoing Communication Between School and Justice Systems

Communication between youth justice personnel and school and school board staff should be encouraged and ongoing. The youth worker should meet regularly with the school or board to advise them of any changes regarding probation, conditional supervision or temporary absence orders, including the expiration of such orders. Similarly, designated school staff should advise the youth worker of attendance or other problems which may result in the young person being found in violation of a court order regarding bail, probation, conditional supervision or temporary absence.

11. Dispute Resolution Mechanism

In circumstances where there is a difference of opinion between the youth worker and school or board staff regarding the nature or extent of information to be provided by one party or the other, boards must have mechanisms in place to resolve the difficulty by referring the matter immediately to the supervisors of each party; e.g., Superintendent of Schools or the Executive Director, Young Offender Branch.

12. Conclusion

The amendments to the *Young Offenders Act* provide for more effective information sharing between professionals engaged in the supervision or care of young offenders in Alberta. This protocol agreement should be used as a framework by school boards, school staff and youth workers to develop partnerships that will result in better ways to identify and respond to the needs of the young offender. It is hoped that the protocol will help clarify the respective roles of school boards, school staff and youth workers in support of coordinated and collaborative approaches to the rehabilitation of the young offender.

REFERENCES

Alberta Education (1996). *Policy, Regulations and Forms Manual.* Edmonton, AB: Policy and Planning Branch.

Canadian School Boards Association (1996). *Protocol and Guidelines — Information Sharing Between School Officials and Young Offenders Personnel.* Ottawa, ON.

Province of Alberta (1995). *School Act.* Edmonton, AB: Queen's Printer.

APPENDIX

Section 38 of the *Young Offenders Act* (new provisions in italics)

Protection of Privacy of Young Persons

38 (1) Subject to this section, no person shall publish by any means any report

(a) of an offence committed or alleged to have been committed by a young person, unless an order has been made under section 16 with respect thereto, or

(b) of any hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence in which the name of the young person, a child or a young person who is a victim of the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify such young person or child, is disclosed.

(1.1) Subsection (1) does not apply in respect of the disclosure of information in the course of the administration of justice where it is not the purpose of the disclosure to make the information known in the community.

(1.11) Subsection (1) does not apply in respect of the disclosure of information by the provincial director or a youth worker where the disclosure is necessary for procuring information that relates to the preparation of any report required by this Act.

(1.12) No person to whom information is disclosed pursuant to subsection (1.11) shall disclose that information to any other person unless the disclosure is necessary for the purpose of preparing the report for which the information was disclosed.

(1.13) Subsection (1) does not apply in respect of the disclosure of information to any professional or other person engaged in the supervision or care of a young person, including the representative of any school board or school or any other educational or training institution, by the provincial director, a youth worker, a peace officer or any other person engaged in the provision of services to young persons where the disclosure is necessary

(a) to ensure compliance by the young person with an authorization pursuant to section 35 or an order of any court concerning bail, probation or conditional supervision; or

(b) to ensure the safety of staff, students or other persons, as the case may be.

(1.14) No person to whom information is disclosed pursuant to subsection (1.13) shall disclose that information to any other person unless the disclosure is necessary for a purpose referred to in that subsection.

(1.15) Any other person to whom information is disclosed pursuant to subsections (1.13) and (1.14) shall

(a) keep the information separate from any other record of the young person to whom the information relates;

(b) subject to subsection (1.14), ensure that no other person has access to the information; and

(c) destroy the information when the information is no longer required for the purpose for which it was disclosed.

(1.2) A youth court judge shall, on the *ex parte* application of a peace officer, make an order permitting any person to publish a report described in subsection (1) that contains the name of a young person, or information serving to identify a young person, who has committed or is alleged to have committed an indictable offence, if the judge is satisfied that

(a) there is reason to believe that the young person is dangerous to others; and

(b) publication of the report is necessary to assist in apprehending the young person.

(1.3) An order made under subsection (1.2) shall cease to have effect two days after it is made.

(1.4) The youth court may, on the application of any person referred to in subsection (1), make an order permitting any person to publish a report in which the name of that person, or information serving to identify that person, would be disclosed, if the court is satisfied that the publication of the report would not be contrary to the best interests of that person.

(1.5) The youth court may, on the application of the provincial director, the Attorney General or an agent of the Attorney General or a peace officer, make an order permitting the applicant to disclose to such person or persons as are specified by the court such information about a young person as is specified if the court is satisfied that the disclosure is necessary, having regard to the following:

(a) the young person has been found guilty of an offence involving serious personal injury;

(b) the young person poses a risk of serious harm to persons; and

(c) the disclosure of the information is relevant to the avoidance of that risk.

(1.6) Subject to subsection (1.7), before making an order under subsection (1.5), the youth court shall afford the young person, the young person's parents, the Attorney General or an agent of the Attorney General an opportunity to be heard.

(1.7) An application under subsection (1.5) may be made ex parte by the Attorney General or an agent of the Attorney General where the youth court is satisfied that reasonable efforts have been made to locate the young person and that those efforts have not been successful.

(1.8) No information may be disclosed pursuant to subsection (1.5) after the record to which the information relates ceases to be available for inspection under subsection 45(1).

(2) *Every one who contravenes subsection (1), (1.12), (1.14) or (1.15)*

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

(3) Where an accused is charged with an offence under paragraph (2)(a), a provincial court judge has absolute jurisdiction to try the case and his jurisdiction does not depend on the consent of the accused.